

Chapter 6—Key Findings

Forest Scale Issues

Road maintenance funding is not adequate to maintain and sign roads to standard.

- The analysis developed a list of roads and a map that displays the potential minimum primary system roads for the three Districts administered by the Malheur. It also developed recommended changes in objective maintenance levels for many of these roads or road segments. The Malheur National Forest is expected to receive approximately \$790,000 in allocated funds in 2004 for road management and maintenance activities. Some Title II funding has been secured for road maintenance (approximately \$290,000 in 2002, and \$440,000 in 2004), which will help fund road maintenance substantially in the short-term, but the program will expire in 2006 unless it is renewed or extended. Road maintenance associated timber harvest will also continue to help accomplish road maintenance on haul roads.
- This analysis recommends changes to the operational maintenance levels of many primary system roads. If the Road Management Objectives for those roads are changed to include the recommended operational maintenance levels from this analysis, it would reduce total annual and deferred road maintenance costs for the Forest. However, even if recommended operational management levels for the potential minimum primary road system are implemented, the annual maintenance costs for these roads alone are still estimated to exceed \$12 million dollars. Even with the focus on the potential minimum primary road system, our current budget does not come close to adequately meeting the needs for maintenance on those roads.
- The sub-forest (project or watershed) level roads analysis process should result in continued reductions of the Forest road maintenance obligations through closing of some level 2 roads, and decommissioning of some level 1 and 2 roads. However, these reductions will be minor compared to the overall road maintenance needs on the Forest.

There are potential environmental impacts from the road system that need to be prioritized and evaluated for future analyses at a sub-forest level scale.

- This roads analysis process identified individual roads that represented high potential for environmental risks. The analysis identified 306 miles of the recommended minimum primary road system with high ratings for both watershed and aquatic risks. The analysis also identified which watersheds have the greatest overall risks. The process used watershed health assessments as the indicator of aquatic health. The watershed risk tables (Appendix D) identify overall watershed and aquatic risks for Forest lands in each sub-watershed.

Future sub-forest scale roads analyses should reference this appendix for risk ratings and baseline watershed information.

- Chapter 4 provides more information in response to this issue.

High road densities in some areas of the Forest are causing impacts to resources and users.

- Neither the current system of OML 3, 4, and 5 roads or the potential minimum primary road system proposed present a road density concern.
- Most high road density areas have many level 1 and 2 roads and an unknown number of unclassified roads. At the sub-forest scale of roads analysis, these areas would be identified and remedial action recommended. One possible opportunity is potential conversion of roads to either motorized or non-motorized trails.

The public is concerned about road-related decisions being made without public involvement.

- The public is concerned that decisions about reducing or reconfiguring the Forest's transportation system might be made without the benefit of public involvement. The roads analysis process doesn't make any road-related decisions. Decisions that will change the existing system will occur through public involvement and site-specific analyses that consider effects on existing roads or roads proposed for addition, deletion, or reconstruction in the future.
- There has been considerable interest by local Counties and citizens in Revised Statute (RS) 2477. Section 8 of the Act of July 26, 1866, 14 Stat. 253, Revised Statute 2477, 43 U.S.C. 932, repealed by the Act of October 21, 1976, (Federal Lands and Policy Management Act, FLPMA) and 90 Stat. 2793, (RS 2477), provided:

“The right of way for construction of highways over public lands, not reserved for public uses, is hereby granted.”

The Statute was repealed by FLPMA, in 1976, but valid rights established under RS 2477 prior to 1976 were not affected by the repeal.

To determine whether a valid RS 2477 highway exists, several elements must be met, as provided by the Statute:

1. The lands were public, not reserved for public uses, at the time of construction.
2. There had to have been some form of construction of the highway.
3. The highway so constructed must be considered a public highway.

Creation of the Forest Reserves generally occurred between 1891 and the early 1900's. Any highway had to be constructed prior to reservation in order to be considered under this Act. Since the assertion is a claim of title against the Federal Government, an RS 2477 claim must be asserted by a public road agency.

- The January 1997, Interior Interim policy and companion September 1997, Forest Service (FS) policy which directed deferring any processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need has not been revisited by either Agency. This policy was issued in light of pending legislation proposed by the Clinton Administration that was to establish a uniform administrative process to address RS 2477 assertions. Congress did not subsequently address the proposed legislation.

In October 1996, various environmental organizations sued several Utah counties and the Bureau of Land Management (BLM) to bar further road construction by the counties over BLM lands. On June 25, 2001, the U.S. District Court for the District of Utah ruled against the counties in favor of the Federal government. The decision was appealed. In 2003, the Department of Interior entered into a Memorandum of Understanding (MOU) with the state of Utah under a settlement agreement for this case. The establishment of this MOU has led to much discussion about process for acknowledgement of assertions and establishment of policy for both the BLM and the FS, but no further action has been taken to lift the moratorium by the Secretaries of Interior or Agriculture.

Under the current moratorium, the FS urges counties and states to work with the FS to authorize use of the roads, individually, and define scope and responsibilities under current authorities of the Forest Roads and Trails Act and FLPMA.

Road access may not be adequate for future management needs.

- Arterial and collector roads are not being maintained to the standards envisioned in the 1990 Forest Plans, because the available funding is not adequate to accomplish the needed work. The road system will continue to degrade, and this will compromise future access on existing roads.
- Comparing the 1990 Forest Plans with the existing road system revealed that less than half of the planned miles of new road construction and road reconstruction projected to meet land management objectives have been accomplished. Most of these road improvements were intended to meet timber stand vegetative treatment needs. On the Malheur National Forest, the timber program still has additional road access needs to meet the 1990 Forest Plan and could have additional road needs under the revised plan. Sub-forest scale roads analyses should focus on road related watershed improvement opportunities, decommissioning of unneeded level 1 and 2 roads, and upgrading roads to meet current and future management needs.

There is not enough public road access to some areas on the Forest.

- The roads analysis confirmed a lack of access in several areas on the Forest that are not included in “roadless areas.” There are a few areas such as the area with “checkerboard” land ownership patterns in the Roberts Creek area, the Utley Butte Wildlife Emphasis Area, Dry Cabin Wildlife Emphasis Area and the Deerhorn Creek area that have little or no motorized access currently available to the Forest Service or the public. The Forest has successfully acquired public access through rights-of-ways acquisitions and land exchanges in some areas, but other areas public access needs still exist.

Past and on-going efforts to decommission and close roads have only been partially successful. A comprehensive policy for assuring that existing and future road closure and decommissioning efforts are effective should be a high priority for the Forest.

- When decommissioning efforts are not effective at eliminating motorized use, it merely converts a system road into an unclassified road.
- When road closure efforts are not effective at eliminating motorized use, it results in unwanted resource impacts and an increase in need for maintenance and associated funding.
- Problems related to continuing motorized use of decommissioned roads and non-compliance with road closures continues to increase in magnitude, and the credibility of the program is threatened.